

STATE OF MICHIGAN
COURT OF APPEALS

BRUCE H. BENZ and STEPHANIE KING
BENZ,

UNPUBLISHED
January 27, 2004

Plaintiffs-Appellants,

v

PITTSFIELD CHARTER TOWNSHIP,

No. 243133
Washtenaw Circuit Court
LC No. 00-000332-CZ

Defendant-Appellee.

Before: O’Connell, P.J., and Owens and Murray, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court’s grant of summary disposition on their claims that defendant violated their rights and the law by enforcing a restrictive covenant placed on their land by the developer who was plaintiffs’ predecessor in title. While not the only available basis, we affirm because the restriction was a reasonable condition related to the development and authorized by statute.¹

The covenant at issue operates in favor of defendant and restricts plaintiffs’ land to residential use and a limited density of homes. Plaintiff asserts that the developer put the restrictive covenant into its deed to plaintiffs as a condition to defendant’s approval of the developer’s planned unit development for a shopping center. For the sake of this case, we will accept this assertion as true. Armed with knowledge of the development’s details and holding a small piece of property defendant needed, plaintiffs deeded a smaller parcel of land to the developer in exchange for the restricted parcel they currently own. Plaintiffs were informed that defendant required the developer to add the covenant to the deed more than a month before plaintiffs, without complaint, closed on the exchange in November 1989.

Plaintiffs now argue that the restrictive covenant represents an illegal and unenforceable condition because the Township Zoning Act, MCL 125.271, *et seq.*, does not specifically allow

¹ We also question plaintiffs’ standing to challenge a restriction that only directly affected the developer’s property interest and that they specifically agreed to accept as part of their deed. Further, defendant presents compelling arguments for the application of laches and waiver.

restrictive covenants and their use as zoning tools improperly circumvents procedural protections. We disagree. We review de novo a trial court's grant of summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The act specifically allows a township to place reasonable conditions on its acceptance of a planned unit development (PUD). MCL 125.286d. While the statute and case law have placed some limitations on a township's authority to impose such conditions, *Troy v Aslanian*, 170 Mich App 523, 527-528; 428 NW2d 703 (1988), the restrictive covenant's beneficial impact on the density around the PUD, the fact that the land was owned by the PUD's developer during the PUD's review, and the condition's overall reasonableness keep the condition within those limitations.

Plaintiffs do not argue that the restrictive covenant fails to benefit the area around the PUD or otherwise meet the standards contained in MCL 125.286d(2) and *Troy*, *supra*. Instead they argue that the township acted outside its authority when it imposed a condition on a parcel of land outside the bounds of the proposed PUD. Plaintiffs rely on the opening phrase in MCL 125.286c(3) that specifically allows the township to regulate the land "[w]ithin the land development project" Nevertheless, the statute plaintiffs cite has negligible relevance compared to MCL 125.286d and case law, and their application to the facts of this case contradict the argued limitation. In this case, the land lies adjacent to the PUD, and the developer purchased the land to increase the potential for the proposed PUD's approval. In a similar case, our Supreme Court upheld a restrictive condition that burdened property falling outside a development when the land was owned by the developer and the restrictions related to the development's use and acceptability. *Altman v Meridian Twp*, 439 Mich 623, 641; 487 NW2d 155 (1992). Moreover, a township naturally has greater leeway to impose a condition than implement a bald restriction, because the developer ultimately decides whether it will accept the condition or forego its plans for development. Therefore, the limiting phrase in MCL 125.286c does not restrict the vast conditioning authority that the Legislature granted townships in MCL 125.286d(2), and an otherwise reasonable and related condition is not rendered invalid simply because it burdens property outside the PUD's bounds.

Plaintiffs next argue that in its present form, the restriction denies them the opportunity to challenge, as arbitrary and capricious, defendant's refusal to remove the restriction from their deed, so it deprives them of their right to due process. This argument overlooks the fact that plaintiffs' predecessor had every opportunity to challenge the condition as unlawful but did not. Plaintiffs, in turn, took the land with full knowledge of the restriction and defendant's express right to its perpetual enforcement. Further, plaintiffs could potentially appeal any arbitrary and capricious decision to defendant's zoning board of appeals, because the decision to continue the restriction's enforcement would not qualify as a PUD or "special land use" decision. MCL 125.290. Regarding the restriction's form, neither MCL 125.286d nor case law prohibit the imposition of a condition in the traditional form of a restrictive covenant, and the statute specifically allows townships to enforce enacted conditions until they are dissolved by "mutual consent of the approving authority and the landowner." MCL 125.286d(3). Because defendant's actions did not violate plaintiffs' rights or the law, the trial court correctly granted defendant summary disposition.

Affirmed.

/s/ Peter D. O'Connell

/s/ Donald S. Owens

/s/ Christopher M. Murray